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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

MICHELLE MCGUIRE, Plaintiff and Appellant, v. TARGET CORPORATION, Defendant and Respondent.	B280514 (Los Angeles County Super. Ct. No. BC563728)

APPEAL from a judgment of the Superior Court of Los Angeles County, Margaret L. Oldendorf, Judge. Affirmed.

Law Offices of Gerald L. Laderman and Gerald L. Laderman, for Plaintiff and Appellant.

Snyder Law; Snyder Burnett Egerer, Sean R. Burnett and Jessica Farley, for Defendant and Respondent.

Plaintiff and appellant Michelle McGuire (McGuire) alleges that in November 2014, she suffered personal injuries after she slipped and fell on a liquid substance on the premises of defendant and respondent Target Corporation (Target). Following a bench trial, the trial court entered judgment in favor of Target. McGuire appeals, arguing: (1) The trial court abused its discretion by accepting Target's untimely answer to the complaint; and (2) Substantial evidence does not support the trial court's finding that Target did not have knowledge of the liquid on its floor prior to her fall. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Incident

On July 3, 2013, McGuire entered a Target store located in Van Nuys, California. After stepping off the escalator, she slipped and fell on a "puddle of liquid." McGuire suffered pain in her cervical spine, and experienced headaches, nausea, and dizziness. At the time of her fall, there were no wet floor signs or caution cones indicating there may be a substance on the floor.

The Video Recording

Target's video camera captured the events occurring before and after McGuire's fall. Relevant to this appeal, approximately eight minutes and 16 seconds prior to the accident, the video depicts an unidentified individual sipping and then dropping a cup on the floor in the same area of McGuire's fall. The parties dispute whether the liquid which McGuire slipped on came from the dropped cup.

The Action

On November 12, 2014, McGuire filed a complaint against Target alleging a cause of action for premises liability. Target filed a notice of removal of the action to federal court based on

diversity jurisdiction. It also filed an answer to the complaint in federal court.

On April 1, 2015, McGuire filed a motion to amend the complaint and remand the action, which the federal court granted. The first amended complaint (FAC) was deemed filed as of the filing date of McGuire's motion.

The matter proceeded to trial in October 2016. Target filed an answer to the FAC on the fourth day of trial. The answer sets forth the same affirmative defenses as its original answer.

Trial Evidence Regarding Target's Knowledge of the Substance on the Floor

A. *Target's Person Most Knowledgeable*

Target designated Jason Rospierski (Rospierski) as its person most knowledgeable regarding Target's cleaning policies. He was the "leader on duty" at the Target store and managed its daily operations. Rospierski also arrived at the scene of the accident shortly after McGuire's fall. He observed a yellow liquid on the ground. He did not know where the substance came from or how long it had been on the floor.

In terms of Target's cleaning policies, Rospierski testified that Target did not have a specific inspection system in place. Instead, all Target employees were responsible for inspecting the aisles and picking up debris or anything else left on the floor throughout the day. An employee was not required to document if he or she cleaned something off the floor, unless there was an accident, and then a Guest Incident Report was required to be filled out.

B. *McGuire's Expert Witness*

McGuire designated Jay William Preston (Preston), a safety engineer expert, as her expert witness. He reviewed the video of the incident and visited the Target store. Preston opined McGuire slipped on a liquid substance on Target's floor. He

testified that he did not believe the substance came from the dropped cup captured on Target's video camera because, among other things, he did not see any droplets leave the cup. He also admitted, however, that he could not exclude the dropped cup as the source of the liquid.

Preston further opined the accident could have been prevented if Target had a formalized inspection system in place. He testified, at a minimum, Target should have assigned a person dedicated to inspecting and sweeping the floors approximately every eight to 10 minutes. However, he also testified that if the spill on the floor happened approximately eight minutes prior to the accident, "that window would be such that even the reasonable inspection wouldn't have discovered it in time to save someone like [] McGuire."

Judgment and Appeal

After a multi-day trial, on December 8, 2016, judgment was entered in favor of Target and against McGuire.

That same date, pursuant to a request filed by Target, the trial court issued a statement of decision in which it ruled McGuire failed to meet her burden of proof that Target had notice of the substance on the floor prior to her fall. It concluded the liquid on the floor originated from the unidentified individual who dropped the cup approximately eight minutes and 16 seconds before the incident, and that such time frame was not long enough to impute constructive notice of the spill against Target.

This timely appeal ensued.

DISCUSSION

A. Target's Untimely Answer to the FAC

1. Background

Following the third day of trial, the trial court informed both parties that it did not appear Target had filed an answer to

the FAC. The court then asked both parties to take a look at the issue.

The next morning, Target filed an answer to the FAC. McGuire raised "procedural objections" to the untimely answer, arguing it should have been filed within 30 days from the date of remand pursuant to Code of Civil Procedure section 430.90, subdivision (a)(2),[1] and that due to Target's substantial delay, the trial court should allow leave for McGuire to file a request to enter default.

The trial court refused, concluding "an untimely answer is not a nullity" and a plaintiff "cannot cause it to be stricken as a matter of right, but . . . the court has discretion to permit the answer to remain[.]" The court then explained that it was exercising its discretion to allow the answer to remain because it favored a trial on the merits, the failure to file a timely answer appeared to be inadvertent, the affirmative defenses contained in the answer to the FAC appeared to be identical to the affirmative defenses contained in the answer filed in federal court, and there was no showing of prejudice to McGuire.

2. Relevant Law and Analysis

McGuire contends the trial court should have required "full briefing [on a motion to strike] and [a] hearing" before allowing Target's untimely answer to remain. But, there is nothing in the

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[1] Code of Civil Procedure section 430.90, subdivision (a)(2)(A) provides in pertinent part: "(a) Where the defendant has removed a civil action to federal court without filing a response in the original court and the case is later remanded for improper removal, the time to respond shall be as follows: [¶] . . . [¶] (2) If the defendant has not filed an answer in the original court, then 30 days from the day the original court receives the case on remand to do any of the following: [¶] (A) Answer the complaint."

record showing McGuire filed a motion to strike or that she informed the trial court that she intended to file such a motion.

"Ordinarily the failure to preserve a point below constitutes a waiver of the point. [Citation.] This rule is rooted in the fundamental nature of our adversarial system: The parties must call the court's attention to issues they deem relevant." (*North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 28.) Here, in order to challenge an untimely answer, it was incumbent on McGuire to file a motion to strike, which she failed to do. (*Goddard v. Pollock* (1974) 37 Cal.App.3d 137, 141.) And there is nothing in the record showing McGuire informed the trial court that she intended to file a motion to strike. Since this point was not raised in the proceedings below, we treat it as waived.

Setting that procedural obstacle aside, McGuire's argument fails on the merits as she has not demonstrated any prejudice as a result of the trial court allowing Target's untimely answer to the FAC. (Code Civ. Proc., § 475 ["The court must, in every stage of an action, disregard any error, improper ruling, instruction, or defect, in the pleadings or proceedings which, in the opinion of said court, does not affect the substantial rights of the parties. No judgment, decision, or decree shall be reversed or affected by reason of any error, ruling, instruction, or defect, unless it shall appear from the record that such error, ruling, instruction, or defect was prejudicial, and also that by reason of such error, ruling, instruction, or defect, the said party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error, ruling, instruction, or defect had not occurred or existed. There shall be no presumption that error is prejudicial, or that injury was done if error is shown"].) As the trial court expressly noted, Target's answer to the FAC was identical to its original answer. Thus,

McGuire could not, and still has not, shown any prejudice as a result of the late response.

B. Target's Knowledge of the Substance on the Floor

1. Standard of Review

"In reviewing a judgment based upon a statement of decision following a bench trial, we review questions of law de novo. [Citation.] We apply a substantial evidence standard of review to the trial court's findings of fact. [Citation.] Under this deferential standard of review, findings of fact are liberally construed to support the judgment and we consider the evidence in the light most favorable to the prevailing party, drawing all reasonable inferences in support of the findings. [Citation.]" (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981.)

2. Relevant Law and Analysis

"It is well established in California that although a store owner is not an insurer of the safety of its patrons, the owner does owe them a duty to exercise reasonable care in keeping the premises reasonably safe." (*Ortega* v. *Kmart Corp.* (2001) 26 Cal.4th 1200, 1205.) In order to impose liability on an owner for injuries suffered due to a dangerous condition on the premises, a "plaintiff has the burden of showing that the owner had notice of the defect in sufficient time to correct it." (*Id.* at p. 1206.) "The plaintiff need not show actual knowledge where evidence suggests that the dangerous condition was present for a sufficient period of time to charge the owner with constructive knowledge of its existence." (*Ibid.*) "[A] defendant is entitled to judgment as a matter of law if the plaintiff fails to show that the dangerous condition existed for at least a sufficient time to be discovered by ordinary care and inspection." (*Id.* at p. 1207.)

McGuire contends the evidence shows Target "had constructive notice of the existence of the dangerous condition prior to the subject accident." In support, she relies on the

opinion of Preston, who testified that Target's inspection system was inadequate, and that the accident could have been prevented if Target had a regular inspection system in place.

McGuire's contentions are unsupported. Her arguments are dependent upon accepting her version of the evidence, which the trial court rejected. "This court cannot reweigh the evidence and reach a contrary factual determination." (*Campbell v. Southern Pacific Co.* (1978) 22 Cal.3d 51, 60.)

Here, the trial court watched the video, which captured where and how McGuire fell on Target's premises. Based on its review, it determined the liquid on which McGuire slipped originated from the cup, which had been dropped approximately eight minutes and 16 seconds before the accident. The video did not capture any other activity that could have caused the spill. The trial court also noted that Preston conceded that if the liquid came from the dropped cup, such time frame was not long enough to impute constructive notice of the spill against Target. This evidence, taken as a whole and viewed in the light most favorable to the judgment, was sufficient for the trial court to reasonably conclude Target did not have actual or constructive knowledge of the liquid on its floor prior to McGuire's fall.

DISPOSITION

The judgment is affirmed. Target shall recover its costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT